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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

CHARLYN ELLIS, an individual,

Case No. 6:24-cv-00205-AA

Plaintiff,

v.

CITY OF CORVALLIS, acting by and
through the Corvallis City Council,

Defendant.

**DECLARATION OF MARK W.
SHEPARD, P.E. IN SUPPORT OF
CITY OF CORVALLIS' REPLY TO
MOTION FOR SUMMARY
JUDGMENT, AND IN OPPOSITION
TO PLAINTIFF'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

I, Mark W. Shepard, P.E., declare as follows:

1. I am the City Manager for the City of Corvallis, Oregon. I have been employed in this position since May 1, 2015. I have personal knowledge of the facts set forth herein. I make this declaration in support of the City of Corvallis' Reply to Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment.

2. As the Manager, I am responsible for appointing and supervising staff support for the City's advisory boards, and for managing the City's financial budget to achieve this objective

with the greatest efficiency reasonably possible. The Climate Action Advisory Board (the “CAAB”) received staff support from two sources. First, Economic Development (“EDO”) staff – as EDO existed in 2022, provided general support to the CAAB by, for example, attending the CAAB meetings, supporting agenda development, and other miscellaneous support tasks. The other source of support came from Central Administration Services (“CAS”) staff, who provided administrative logistics support. This includes reserving meeting rooms, posting meeting announcements and agendas, providing support to set up meeting recordings/broadcasts and coordinating meeting minute takers all in accordance with public meetings/records laws.

3. The EDO previously consisted of 3.8 full-time equivalent staff (“FTE”). The EDO was charged with supporting economic development efforts across the City and Benton County. Over time, the EDO scope of work extended to include staff support for CAAB and the Imagine Corvallis Action Network (“ICAN”). Both are advisory bodies to the City Council.

4. As of November 2022, the EDO had experienced several staff departures, leaving the EDO with a staff of only 1.8 FTE. The CAAB has continued to meet despite the staffing shortages. The CAAB and the CAAB subgroups met 11 different times in 2023, including monthly meetings of the CAAB since September 2023. The CAAB and the subgroups have met 14 times in 2024, as of April 23, 2024. City staff at my direction have provided the necessary support for the CAAB meetings, regardless of our staffing shortages, and I have kept the City Council aware of the staffing challenges and my plans for restructuring departments to achieve these objections.

5. For example, the November 2022 staffing departures within EDO provided an opportunity to restructure the department and how their book of business is executed. Doing so is my responsibility as the City Manager. On multiple occasions prior to September 2023, I

informed the City Council that I was restructuring the EDO. The City Council was aware that this restructuring was ongoing and not yet complete as of September 2023.

6. I shared an update regarding the EDO restructuring during a presentation to the Budget Commission on May 4, 2023. I informed the Budget Commission—which includes City Councilors—that the restructuring of the EDO was in process. Councilor Ellis attended that meeting. The minutes of the May 4 Budget Commission meeting reflect that Councilor Ellis asked, and I responded to, a question about FTE support for both the CAAB and ICAN:

- In response to a question from Councilor Ellis, Manager Shepard said they could not make a commitment to the number of FTEs that would be committed to support the CAAB and ICAN work, as it will be determined during the transitioning process.

(Ex. 1 at 6.) Despite the lack of commitment to the number of FTEs, I have continually supported the needs of the CAAB through staff assignments and reassignments, including when needs have arisen to accommodate employee departures and leaves of absence. For example, the work of the ICAN was placed on hold so that staff resources could be focused on economic development and support of the CAAB.

7. The vacant EDO Manager position was filled in August 2023 while I continued to work on finalizing the structure for the remaining EDO work and City Manager support. The restructuring was completed in early 2024 with the hiring of an Innovation Manager. The job opening for an additional 1.0 FTE to support the Innovation Manager's multiple work efforts has been posted. The duties of this new position will include, but are not focused on, the support of the CAAB and ICAN. The Innovation Manager has been providing staff support for the CAAB since January 2024, and will continue to do so until the EDO restructuring is finalized.

8. Backing up to circumstances in the summer of 2023, Jerry Sorte was the EDO staff member providing the general support to the CAAB. On August 17, 2023, Jerry informed me that he was planning to take 12 weeks off using Paid Leave Oregon starting September 14,

2023. Knowing then that Jerry was going to be gone for an extended period of time, I scheduled a meeting with him to discuss what work efforts, including the CAAB meetings, needed to be covered while he was on extended leave. Jerry and I met on August 29, 2023. I asked him what was needed to continue to support the CAAB and their work during his absence, for the purpose of arranging the appropriate staff support. Jerry told me that the CAAB was not working on anything immediately pressing and that he did not think any staff support was needed for the CAAB while he was gone. He did not anticipate the CAAB would meet after their September meeting (which Jerry would attend) until December after he was back at work.

9. Based on that conversation with Jerry, I did not think there was a need to make any staff assignments to support the CAAB while Jerry was gone. That said, as noted below, I also make it my practice to offer one-on-one meeting time with every City Councilor. Councilors also freely share questions and concerns with me via email outside of meetings. Councilor Ellis did not inform me of any pressing or emergent needs for the CAAB meetings.

10. I was out of state on approved vacation from September 12, 2023, to September 22, 2023. When I returned from my vacation, I learned on September 25, 2023, from a City staffer of the motion Councilor Ellis made at the September 18, 2023, Council Meeting. After learning of this motion, I had a brief conversation with Councilor Ellis before the October 5, 2023, Council Work Session about the CAAB needs. Based on that conversation, I arranged for CAS staff to provide the needed administrative support for the CAAB to meet (e.g., reserving meeting rooms, posting meeting announcements and agendas, providing support to set up meeting recordings/broadcasts and coordinating meeting minute takers all in accordance with public meetings/records laws). With that administrative support, the CAAB met in October, November, and December 2023.

11. If I had been informed by Jerry or Councilor Ellis prior to Jerry taking leave that the CAAB needed additional administrative support while Jerry was out, I would have arranged for that support earlier.

12. As noted, I offer to meet with each City Councilor in a regular monthly meeting. I estimate that Councilor Ellis and I have met one-on-one less than 10 times in the more than seven years she has been a Councilor. Rather than doing so, Councilor Ellis typically emails me when she has questions or concerns or a need that I can address. It was surprising to me when I heard that, at the September 13 CAAB meeting, Councilor Ellis said she had been thinking about the CAAB staffing issue for weeks. I do not recall receiving any emails from Councilor Ellis about this issue leading up to the September 13 meeting of the CAAB. I did a search of my email and did not find any emails from Councilor Ellis regarding this in the weeks leading up to the meeting. Councilor Ellis did not talk to me via phone or in person about such a concern in the weeks leading up to the meeting. Likewise, Jerry did not mention during our August 29 meeting that Councilor Ellis had any concerns about staffing.

13. To be clear, at the time the relevant CAAB and Council meetings took place, there was no vacant position for a climate program specialist. We have never had a position with the title or job description of a Climate Program Specialist in my time as City Manager.

14. Councilor Ellis' actions at the September 13, 2023, CAAB meeting and the September 18, 2023, Council Meeting have impacted my ability to perform my duties as City Manager effectively. Councilor Ellis has made it clear that she intends to continue to attempt to influence me in my role as the administrative head of the City in hiring and firing decisions.

15. Leading a large public organization is challenging. These challenges have been amplified due to Councilor Ellis' actions at the September CAAB and Council meetings. There has been no effort by Councilor Ellis to address or mitigate this ongoing pressure.

16. Attached is a true and correct copy of the May 4, 2023 City of Corvallis Budget Commission Minutes as Exhibit 1 to my declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May ___, 2024, at Corvallis, Oregon.

05 / 01 / 2024

Mark W Shepard

Mark W. Shepard, P.E.